

**CITY OF SHORELINE
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

APPELLANTS: U.S. West Communications, represented by attorneys
Richard E. McCann and Adrienne E. Quinn

FILE NO.: 1997-00530

APPEAL: U.S. West Communications is appealing a Determination of Significance issued pursuant to the State Environmental Policy Act (RCW 43.21C) in regard to the construction of a wireless communication facility consisting of a 95 foot tall metal monopole and related equipment

BACKGROUND:

A. Location and Neighborhood: The subject property is located at 17748 15th Avenue NE, Shoreline, Washington 98155 according to information filed by the applicant. However, City records identify the location as 1600 NE 179th Street, Shoreline, Washington 98155 and that address will be used in this report..

B. The Proposal: The project is construction of a wireless communication facility consisting of a 95 foot tall metal monopole with a base diameter of approximately 4 feet; a 3 foot lightening rod affixed atop the monopole; 3 sectors of 2 antennas (a total of 6 antennas) mounted on the monopole; a 12 inch GPS antenna; and base station equipment cabinets mounted on a concrete pad 9 feet 6 inches by 12 feet. The entire site is 25 feet by 25 feet and will be enclosed by a chain link fence and landscaped.

C. History: The application to construct the wireless communication facility was originally submitted to the City of Shoreline on April 1, 1997. The application was rejected because it lacked necessary information and the filing fee. The application was resubmitted and was accepted by the City on April 4, 1997.

On May 1, 1997, the City notified US West's representative that a preliminary review of the application had been completed and, based upon that review, the City requested additional information in order to make a Threshold Determination pursuant to the State Environmental Policy Act. US West responded to the City's request for information by letter dated May 30, 1997 and received by the City on June 2, 1997.

During this period and prior to the issuing of a Determination of Significance, the City was involved in discussions with representatives of US West, and the Shoreline Water District, to explore two nearby alternative sites for the proposed facility: an existing AT&T monopole and Shoreline Water District's water tower. The specific sequence of events from the time of the application, the adoption of the new Wireless Facilities Ordinance to the issuing of the Declaration of Significance and the appeal are important to understanding many of the issues of this appeal; and are summarized as follows (Note, not all documents in the record are listed):

- April 1, 1997 Initial Building Permit Application not accepted by City, DSG
- April 4, 1997 Building Permit Application accepted by City, DSG
- April 7, 1997 City adopts moratorium (Ordinance #124) on accepting new applications
- April 28, 1997 City Council adopts new Wireless Facilities Ordinance #127
- April 30, 1997 Preliminary review of Environmental Checklist by James Holland, DSG. References are made to the proposal being inconsistent with the Wireless Facility Ordinance, 4/28.
- May 1, 1997 City Manager writes Janice Peters, U S West New Vector asking that U S West Communications, requesting that the application be withdrawn.
City DSG requests additional information from Appellant's representative, The Walter Group, to conduct SEPA review.
- May 7, 1997 New Wireless Facilities Ordinance #127 goes into effect.
Letter from The Walter Group regarding monopole and collocation at Water District site.
- May 9, 1997 Letter from Adrienne Quinn, attorney for U S West explaining the difference between the various wireless companies and that U S West Communications was not aware of the City's public workshop process and that they had not participated.
- May 21, 1997 Letter further clarifying the relationship between U S West NewVector Group, Air Touch Communications, U S West Media Group and U S West Communications.
- May 31, 1997 Appellant provided the additional SEPA information requested by the City.
- Undated Additional staff comments on Environmental Checklist by James Holland following receipt of additional SEPA information.
- June 2, 1997 Appellant representatives Ralph Long, Regional Real Estate Manager; Kelly Campbell, Regional Real Estate Coordinator; Adrienne Quinn and Dick McCann of Perkins Coie met with City of Shoreline representatives Anna Kolousek, Director of Development Services and Bruce Disend, City Attorney. It was discussed that a site was needed in that area, that co-location on the AT&T monopole was not possible because the Shoreline Water District has requested AT&T remove the monopole to make room

- for water tank expansion, and that U S West Communications apparently could not site on the Shoreline Water District tank.
- June 24, 1997 Meeting of appellant with Shoreline Water District Commission. Mr. James Holland represented the City of Shoreline. At the meeting the Water Commissioners stated that they would not reduce the \$80,000 siting fee. Further, the Water District Engineer expressed doubts that the water tower is capable of accommodating another telecommunications carrier and mentioned that, even if the tower could accommodate another carrier, two carriers were in line ahead of the appellant.
 - July 3, 1997 Marcus Handler of the Walter Group, Appellant's zoning consultants, in a letter to the City, formalized U S WEST Communication's request that U S West Communications be allowed to relocate on the AT&T monopole on the Shoreline Water District property and create a collocate pole that would enable U S West Communications to withdraw its permit application for the site at issue here. (It was testified that the City did not respond to the letter).
 - July 16, 1997, Dick McCann, attorney for the appellant, wrote to the City outlining the efforts made to try to accommodate the City's wishes and the timeline required by law for processing permit applications, and requesting that the permit application be processed without further delay.
 - July 21, 1997 City issued a Determination of Significance.
 - August 1, 1997 U S West Communications appealed the Determination of Significance.

D. SEPA: The City issued a Determination of Significance for the proposal on July 21, 1997. The Determination indicated that the proposed facility would likely have a significant adverse impact on the surrounding environment due to the existence of the AT&T monopole, a reduction in the redevelopment potential of the immediate neighborhood, and aesthetic considerations.

The Determination of Significance stated the following findings:

Land and Shoreline Use;

1. If approved, the proposal would become the second single-user monopole in a two-block area. Single-use monopoles would, therefore, account for two of the three antenna mounts in the immediate neighborhood but provide one quarter (or less) of needed mount capacity (an expected total of eight-plus Wireless Service providers).
2. Reduced Neighborhood Redevelopment Potential. The proposed location of an uncamouflaged monopole at 1600 NE 179th St. will reduce the potential for

redevelopment of (reinvestment in) the immediate neighborhood in two ways:
Firstly, by strengthening the blighting influence of the existing water tower and
monopole.

Secondly, by preventing the sale or redevelopment of land along existing property lines.

Aesthetics;

1. The proposed monopole will directly and indirectly blight the community through:
 - a. Introducing new land uses at grade level that are incompatible with surrounding land uses and suitable for undergrounding or similar effective screening measures and
 - b. Introducing a new 95" tall pole that will mirror the effect of the monopole on Shoreline Water District property by being an unrelieved intrusion on the established pattern of neighborhood development.

The City identified the following areas for discussion in the required Environmental Impact Statement:

1. Evaluation of the environmental impacts of alternative strategies for providing area-wide wireless telecommunications system service coverage (this shall include alternative antenna locations, and alternative antenna mounting methods).
2. Impacts of monopole and support equipment location on the redevelopment potential of a property.
3. The effects of monopole and support equipment location on neighborhood redevelopment.
4. The impact of monopoles and support equipment on long-term community land use plans.
5. Methods of mitigating the aesthetic impacts of uncamouflaged monopoles and support equipment.

E. Appeal: By letter dated August 1, 1997, US West appealed the Determination of Significance stating 11 grounds for appeal:

1. The City's factual finding that US's monopole would cause cumulative impacts because it would be the second monopole in a two block radius is erroneous because the owner of the existing monopole, AT&T, has been given notice that AT&T must remove their monopole to make room for additional water tank expansion.
2. The City, by basing their Determination of Significance on socio-economic impacts (supposed adverse impact on neighborhood redevelopment and property values) has violated Washington law which prohibits basing SEPA review on socio-economic impacts, including neighboring property values.

3. The City has violated Washington law because aesthetics cannot be the sole reason for issuing a Determination of Significance.
4. The City's contention that the proposed monopole is incompatible with surrounding uses is factually erroneous because the site is located in a business zone, an area that contains other monopoles, numerous business signs at approximately the same height as the monopole, as well as, numerous utility poles supporting electric wires.
5. The City has no factual basis for its contention that US West Communications monopole would prevent the sale or redevelopment of land along existing property lines, and, therefore, the City's determination is arbitrary and capricious.
6. The City's determination that US West Communication's proposal would blight the community is arbitrary and capricious because the City has no factual basis for this determination.
7. US West Communication's proposed monopole is consistent with applicable comprehensive plan policies and zoning.
8. Based on information and belief, the City has not required any other wireless telecommunications carrier to prepare an Environmental Impact Statement ("EIS"). Consequently, the City has violated the Telecommunications Act of 1996, 47 U.S.C. Sec. 332 (c)(7)(B)(I), by discriminating between carriers.
9. By requiring only US West Communications to prepare an EIS, the City has violated the Equal Protection Clause of the United States Constitution.
10. By failing to process US West Communications application within a reasonable amount of time, the time required by relevant statutes, the City has violated the Telecommunications Act of 1996, which requires that applications for personal wireless communications facilities be processed within a reasonable amount of time.
11. US West Communication's proposal will not have more than a moderate effect on the environment. Consequently, there is no basis for requiring US West Communications to prepare an EIS.

PUBLIC HEARING:

On October 8, 1997, the Hearing Examiner held a public hearing on the appeal. The hearing was opened at 7:00 p.m. in the Mount Rainier Room of the Shoreline Conference Center and was closed at 10:15 p.m. The record was held open administratively until October 17, 1997 to receive additional items identified during the public hearing as well as to receive draft findings and conclusions from both the appellant and the City.

Subsequent to the receipt of that information the Hearing Examiner revisited the site, reviewed the file, Exhibit H, and spoke with James Holland to interpret his writing on the notes on the environmental checklist. Participants in the public hearing and the exhibits offered and accepted are listed in this record. A verbatim recording of the hearing is available in the City Clerk's office. The file of the hearing exhibits are available for public inspection in the office of the City Development Services Group.

At the beginning of the hearing, the Hearing Examiner indicated that he had visited the site and the adjacent commercial and residential neighborhood as well as two other wireless facility sites identified in the briefs. He noted that he had reviewed the entire record, including the pre-hearing briefs filed by the parties. Each witness was asked to affirm that the information they would provide was true.

US West objected to testimony being presented by anyone other than the City and US West since they were the only parties to the appeal. The City Attorney responded that those residents affected by the proposal were parties and were considered witnesses on behalf of the City. The Hearing Examiner acknowledged the objection and ruled that the testimony of the residents related directly to the issues of the appeal would be received.

Testimony was offered at the public hearing by the City of Shoreline, Development Services Group, US West Communications, residents of the neighborhood of the proposed site, a resident of Shoreline, and the owner of the proposed site.

Testimony was offered as follows:

City of Shoreline:

James Holland, Project Manager III/Land Use Planner
Anna Kolousek, Director of the Development Services Group
Bruce Disend, City Attorney

US West Communications:

Ralph Long, Regional Real Estate Manager
Mark Poletti, Radio Frequency Engineer
Kelly Campbell, Regional Real Estate Coordinator
Richard McCann, attorney for US West
Adrienne Quinn, attorney for US West

Neighbors and Shoreline Residents:

Jean Gosse
Alverna Jackson
Kathy Halliburton

Property Owner:

Pat Melton

Testimony of the Development Services Group was presented by James Holland and Anna Kolousek. Mr. Holland testified concerning the history of reviewing wireless telecommunications facilities in Shoreline, the review process applied to previous applications, and the review process applied to the US West application. Anna Kolousek testified concerning the reasons for issuing the Determination of Significance. Ralph Long provided testimony concerning US West's application and the company's efforts to site the facility. Mark Poletti provided testimony on the technical aspects of wireless communications facilities. Kelly Campbell testified in regard to a meeting with City staff to discuss US West's proposal.

The testimony of Jean Gosse emphasized the impacts that the monopole would have on the residents of the condominiums located near the proposed site. The testimony of Kathy Halliburton addressed the impacts the monopole would have on persons passing the site and stressed the importance of aesthetics to the community. Alverna Jackson testified that she lives in front of the Water District's water tower, that she did not object to the monopole but did object to the water tower, and suggested that US West buy part of the AT&T monopole. Pat Melton, owner of the proposed site, testified that he had received a fair offer from US West to make use of his property and did not believe that the monopole would adversely affect the value of his property. He noted that no other member of the business community was in attendance expressing concern about the impact on their property.

After reviewing the administrative record, considering the testimony of all of the witnesses, viewing the subject property and its surroundings, viewing other installations approved in the City, and reviewing the entire file, the Hearing Examiner hereby enters the following Findings and Conclusions:

I. FINDINGS:

A. On April 4, 1997, the appellant submitted an accepted building permit application with fee to the City of Shoreline to construct a 95-foot monopole with six PCS antennas flush-mounted to the top of the monopole at 1600 NE 179th Street. The accompanying ground equipment is to be placed on a 9'6" x 12' concrete pad and will be enclosed in a slatted wood fence and screened by landscaping. The proposed monopole and associated equipment is proposed to be placed at the far northwest corner of the site to allow the potential for a building to be constructed in front of the monopole. The monopole is proposed to be painted gray-blue to blend with the Northwest sky.

B. On July 21, 1997 the City of Shoreline issued a Declaration of Significance. The primary issue related to this appeal is whether the City of Shoreline Development Services Group acted in an arbitrary and capricious manner or contrary to law in issuing a Determination of Significance for US West's application.

C. The timing and process of involving wireless providers used by the City of Shoreline in preparing a new Wireless Communication Facilities Ordinance and the timing of submission of the US West Communications application have complicated the environmental review and processing of this application. When the appellant submitted the building permit application, the City apparently felt there was a lack of good faith on the part of U S West Communications. The City believed that U S West Communications had been invited to and actually did participated in a cooperative work group during which a new telecommunications ordinance was being prepared. Mr. Long, Regional Property Manager for U S West Communications, testified at the appeal hearing that they were not invited and did not know about the work group. He also testified that U S West Communications and U S West NewVector (now AirTouch) are not the same company, do not share the same management, and do not employ the same individual consultants, agents or representatives. Additional documentation was also provided by the appellant.

D. The Comprehensive Plan designates this area as a Community Business Center. Policy U-617 identifies Community Business Centers as providing shopping and other services for nearby residences including retail stores and services, professional offices, community services and multifamily and mixed use developments. Other policies relate to location, arterial access, density of residential, pedestrian and bicycle travel, and preservation of attractive natural features, historic buildings and established character.

E. The Comprehensive Plan in policies related to Telecommunications addresses the promotion of widespread availability of telecommunication facilities (ET-401), utilizing these services to mitigation transportation impacts, encouraging long-term planning to insure adequate system capacity and to take advantage of innovative technology, coordination of activities including encouraging co-location of telecommunications facilities where feasible (ET-404) and providing uninterrupted service during natural disasters.

F. The proposed site is zoned Regional Business. The purpose of this district as defined in the code is "to provide for the broadest mix of comparison retail, wholesale, service and recreation/cultural uses with compatible storage and fabrication uses, serving regional market areas and offering significant employment opportunities.

G. Monopoles under 100 feet in height are permitted outright in Regional Business zones. In Chapter 21A.26, Development Standards, Communication Facilities, it notes the purpose as being "to assure greater compatibility between communication facilities and adjacent land uses,..." It further makes provision for a basic setback of 10 feet with this being increased "an additional 20' from any property line abutting any R, UR or RA zoned properties;" The appellant's proposed facility meets these standards.

H. The site proposed for the facility which is located in one of the more intensively developed commercial areas within the City contains an office building with apartments above directly to the east of the proposed monopole site. Surrounding uses are:

- North of the site are condominiums and a Les Schwab Tire Center (immediately adjacent to the monopole location);

- East of the site is another office building and the Kuleana's Forest Hills Condominiums which have their primary access from NE 179th;

- South of the site is 179th Street NE with an apartment building facing the street;

- West of the site are retail stores including a commercial water supply store.

I. Property at 177th Street NE and 15th Avenue NE, north of the condominiums adjacent to the appellants site, is owned by the Shoreline Water District and has two existing communications facilities. One facility consists of the District's 100+ foot high water tower where communication facilities owned by Cencall, Sprint and Nextel are currently located. The second facility consists of an approximately 150 foot monopole erected by AT&T Wireless.

J. The appellant, U S West Communications Wireless Division ("U S West Communications"), a provider of Personal Communications Services ("PCS") wireless telecommunications technology presented considerable technical testimony on:

- locational criteria for antenna sites;

- the definition of search rings and their importance to uninterrupted service;

- the need for an antenna site within the search ring that will be served by the proposed antenna site;

- an antenna height of 95 feet is required so that the signal can transmit over the tree line; and,

- field research done to assure the proposed site will meet their criteria;

K. The City recommended that the appellant consider locating their facility on the Water District's tower or on the AT&T monopole. In responses by the appellant it was noted that the Water District site was an optimal location. US West did not contact AT&T because of their understanding that AT&T would not allow co-location on AT&T facilities. US West subsequently learned that AT&T had modified its position on co-location, but decided it was too late for US West's needs to pursue that option. There is also a question concerning whether the AT&T monopole will remain on the Water District property. Since 1994, the Water District has sent two notices to AT&T indicating that the monopole may have to be removed. The latest notice indicated that AT&T likely would be required to remove their monopole by August 14, 1999.

L. US West did contact the Water District in regard to using their water tower. The District informed US West that the fee for using the tower would be \$80,000 plus additional charges. US West has indicated that the District's fees are expensive based on their experience. A question was also raised as to whether the water tower has the structural capacity to hold the existing and proposed wireless facilities and whether the

combination of this many telecommunication facilities at this one site can be accommodated without signal interference.

M. The proposed monopole will be visible from NE 179th Street and to persons in the vicinity of the site or passing by on 15th Avenue NE about a block away.

N. The Declaration of Significance (DS) was based, in large part, on the cumulative impact of the existing water tower and monopole and the proposed monopole on the neighborhood environment, potential site and neighborhood redevelopment and aesthetics. The DS did not address the potential removal of the AT&T monopole, and it was testified at the public hearing by City staff that its removal would not change the determination.

O. The proposed facility is generally compatible with surrounding uses, and the presence of the existing water tank with telecommunication facilities and the AT&T monopole do not appear to have had a significant blighting influence on uses in the vicinity. The owner of the property on which the proposed facility is located also owns two adjacent properties and testified that he did not feel the appellant's facility would restrict his ability to sell adjacent property or redevelop it.

P. The proposed facilities appears to be generally consistent with the policies of the Comprehensive Plan for Community Business Centers and Telecommunications; although the selection and comparison of individual policies may, in themselves, appear to be in conflict. With the information currently available, it does not appear to be feasible to collocate wireless facilities as urged in the Telecommunication policies.

Q. The City has processed US West's application within a reasonable amount of time and appears to have processed all applications for wireless communication facilities in a consistent fashion, thereby not violating the Telecommunications Act of 1996 by discriminating between carriers.

R. There is not evidence in the record to suggest that the proposal will have more than a moderate effect on the environment and that identified impacts cannot be reasonably mitigated.

CONCLUSIONS:

A. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

B. The City of Shoreline was operating under the provisions of the King County Code on April 4, 1997 when U S West Communications submitted its building permit

application; therefore, U S West Communications' building permit must be reviewed for consistency with the adopted King County Code and the King County Comprehensive Plan.

C. A monopole under 100 feet in height was a permitted use in the Regional Business Zone and the proposal met all development standards for Communication Facilities as required in Chapter 21A.26.

D. On May 7, 1997 a new City of Shoreline ordinance that prohibits monopoles went into effect (Adopted April 28, 1997); however, because this ordinance was enacted after U S West Communications had submitted its building permit application for this site, the ordinance's provisions do not apply to U S West Communication's proposal; however, it appears from a review of staff comments on the Environmental Checklist that these provisions were considered in making the determination of significance. Specifically, it was noted both in the Land and Shoreline Use and Aesthetics elements that the proposal was not consistent with the Wireless Facilities Ordinance (4/28).

E. Although the decision of the responsible official is to be accorded substantial weight in an appeal of an environmental determination, based on the testimony provided and a review of the record it is concluded that the following information was not adequately considered by the Responsible Official and errors were made in the analysis and review:

1. The presence of the AT&T monopole on the property of the Shoreline Water District and the fact that this proposed monopole would be the second single user monopole was one of the primary factors in three of the four findings under Land and Shoreline Uses and Aesthetics that contributed to the Determination of Significance. The City did not adequately consider the fact that AT&T had been given notice to remove its monopole by August 1999 by the Shoreline Water District. This information was made part of the record (Attachment E and Attachment G to the Staff Report, Hearing Examiner Exhibit E) well before the City issued the Determination of Significance.

2. In the staff review of the Environmental Checklist by James Holland, April 30, 1997 it is noted under Section 8, Land and Shoreline Use, item 1. *Proposed measures to ensure the proposal is compatible with existing and project land use plans, if any* that the appellant's proposal is contrary to adopted Wireless Facilities Ordinance (4/28) and Findings of Wireless Facilities Workgroup (February 97). Other references under Section 10, Aesthetics also reference the Ordinance adopted 4/28. This indicates that the project was, in fact, reviewed against the provisions of the new Wireless Facilities Ordinance #127 adopted on April 28, 1997 and effective May 7, 1997. These are the only two elements of the environment identified in the Declaration of Significance as having significant adverse environmental impacts. This proposal is not subject to the requirements of Ordinance #127 because appellant's building permit application was submitted and accepted prior to its adoption.

3. Although information had been submitted relative to the potential and problems for collocation on the Shoreline Water District site (water tower or AT&T monopole) it does not appear to be conclusive. Although it was testified that the cost is excessive, it appears that other wireless providers have reached agreement. It was recommended by the City to explore collocation and was also noted by the appellant that the Water District property is an optimal site.

F. It is also evident that there were inconsistencies by the City with the provisions of SEPA:

1. The City relied on factors other than SEPA's list of elements of the environment, namely blight, in concluding that appellant's proposal would have a probable adverse impact on the environment. Although it was argued that blight was a factor of land use, no reference was made to potential blighting factors in the environmental checklist and a Determination of Significance cannot be based on anything but the elements of the environment listed in WAC 197-11-444. The City's deviation from the list of elements of the environment violates SEPA's requirements.

2. The finding that significant adverse impact on aesthetics will be created by introducing new uses at grade level (ground equipment) that are incompatible with surrounding uses and that are suitable for undergrounding or other suitable screening is not based on fact. A review of the site shows that immediately adjacent to the proposed ground equipment are a windowless concrete block wall and a fence with a metal container, both without landscaped screening. The City of Shoreline has permitted an antenna site with similar ground equipment on a much more visible site in a less intensive commercial zone with a slatted chain link fence and little or no landscape screening.

3. WAC 197-11-060(4)(a) Content of Environmental Review states: "SEPA's procedural provisions require the consideration of 'environmental' impacts, with attention to impacts that are likely, not merely speculative." The City's assertion that the monopole would reduce neighborhood redevelopment or reinvestment potential "by preventing the sale or redevelopment of land along existing property lines" does not appear to be based on information or data in the record, does not appear to be illustrated by impacts on the neighborhood from the existing water tower or monopole and was refuted in testimony by the owner of adjacent property. That conclusion, therefore appears to be based on speculation.

4. Most of the five areas for discussion in the EIS identified by the City do not seem to be necessary based on facts or other City actions:

a. An "Evaluation of the environmental impacts of alternative strategies for providing area-wide wireless telecommunication system service coverage" does not seem appropriate when the City has encouraged the appellant to pursue location at the Water District site which is in the same service area identified by the appellant in their

analysis. This would indicate that there is agreement with the basic analysis of the appellant on the need for a facility in this vicinity.

b. The requirement to evaluate the "impacts of monopoles and support equipment on long-term community land use plans" seems to be a task outside the scope of the appellant and something that would have been considered by the City in the preparation and adoption of the recent Wireless Facilities Ordinance #127. Although I have not read that ordinance, it was testified that it prohibits the placement of monopoles in the City of Shoreline; therefore, it appears that the City has already made that policy determination and that this would be an unnecessary and redundant exercise.

c. Other requirements deal with the speculative aspects of the impact of monopoles and support equipment on the redevelopment potential of the property and on neighborhood redevelopment and have already been discussed.

d. Finally, methods of mitigation of the aesthetic impacts of uncamouflaged monopoles and support equipment at this particular site may be valid; however, it does not appear necessary to require an Environmental Impact Statement to accomplish this evaluation and potential mitigation.

G. The identified significant adverse impacts put forth by the City are either not based on fact; others impacts such as the potential removal of the AT&T monopole have not been adequately considered; and, finally other impacts are speculative and not likely to occur. Further, it appears that the provisions of the Wireless Facilities Ordinance # 127 adopted after the appellant's building permit application was accepted by the City was actually used as part of the analysis of the environmental checklist. Without a factual basis for the elements of the environment identified in the Declaration of Significance and by referencing an ordinance which was not applicable to the application, the City of Shoreline's decision is determined to be arbitrary and capricious and contrary to law.

III. DECISION:

Based upon the foregoing findings of fact and conclusions, the appeal by US West Communications of the Determination of Significance, issued by the Development Services Group of the City of Shoreline, is upheld. The Declaration of Significance is withdrawn subject to the following conditions:

1. The Appellant will provide to the City of Shoreline additional information related to the following items:

a. Substantiation of the inability to locate on the Shoreline Water District tower, including potential interference from other existing and proposed wireless facilities and structural capacity of the tower to accommodate the proposed facility;

b. Timing and likelihood of the removal of the AT&T monopole and the potential for collocation if the tower, in fact, will remain for a reasonable period of time; and,

c. Methods of further mitigating the aesthetic impacts of an uncamouflaged monopole and support equipment at the proposed site.

2. The City of Shoreline will:

a.. Work with the appellant and the Shoreline Water District in obtaining the information in items 1.a. and 1.b. to determine its appropriateness and reasonableness as a potential alternative location meeting the timing needs of the appellant; and,

b. Impartially evaluate the above provided information and issue a Mitigated Declaration of Non Significance within 30 days of receipt of the information from the appellant.

EXHIBITS:

The list of the exhibits entered in this proceeding is attached hereto.

PARTIES OF RECORD:

Development Services Group, City of Shoreline

Appellant: US West Communications

Jean M. Gosse, 17930 23rd Lane NE, 105 H, Shoreline 98155

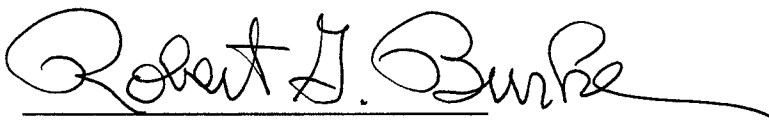
Kathy Halliburton, 18315 Wallingford Ave. N., Shoreline 98155

Pat Melton, 17767 15th Avenue NW

Judy R. Butz, 1702 NE 179th Street, A-101, Shoreline 98155

Alverna Jackson, 1702 NE 179th, #102-A, Shoreline 98155

Entered this 31st day of October, 1997. The decision of the Hearing Examiner shall be the final decision on any appeal of a threshold determination.



Robert G. Burke, Hearing Examiner

APPEAL:

An appeal of the Hearing Examiner's decision is governed by RCW 43.21C.075, the appeal section of SEPA statutes. Under this provision an appeal of the environmental determination must be combined with an appeal of the underlying governmental action.

EXHIBIT LIST

U.S. WEST COMMUNICATIONS (Project No. 1997-00530)

SHORELINE HEARING EXAMINER PUBLIC HEARING October 8, 1997

- Exhibit A** **Appeal of U.S. West Communications**
Submitted by Richard McCann and Adrienne Quinn,
Attorneys for U.S. West Communications
Filed with City Clerk August 1, 1997
Dated August 1, 1997
- Exhibit B** **Pre-hearing Brief**
Submitted by Bruce Disend, City Attorney, City of Shoreline
Received September 24, 1997
- Exhibit C** **Pre-hearing Brief**
Submitted by Perkins Coie, Attorney for U.S. West Communications
Received September 24, 1997
- Exhibit D** **Pre-hearing Brief Reply**
Submitted by Perkins Coie, Attorney for U.S. West Communications
Received October 1, 1997
- Exhibit E** **Staff Report to the Hearing Examiner**
Submitted by James Holland, Development Services Group (DSG)
City of Shoreline
Received October 2, 1997
- Exhibit F** **Letter from Judy R. Butz**
1702 N.E. 179th Street, A-101, Shoreline, WA 98155
Dated September 30, 1997 - Received October 2, 1997
- Exhibit G** **Letter to the Hearing Examiner from Bruce Disend, City Attorney,**
City of Shoreline
Dated and received October 3, 1997
- Exhibit H** **U.S. West Project File (1997-00530)**
Development Services Group City Project File, City of Shoreline
Entered into the record October 8, 1997 at the request of Richard McCann,
Attorney, U.S. West Communications

- Exhibit I** Letter to John Helmer, Planner, JM Consulting Group, Inc., 500 - 108th Avenue N.E., Suite 1150, Bellevue, WA 98004 from James Holland, DSG, City of Shoreline
Dated November 13, 1996
Entered into the record October 8, 1997 at the request of Richard McCann, Attorney, U.S. West Communications
- Exhibit J** G.T.E. Project File, 644 Richmond Beach Rd. (1996-00772)
Development Services Group City Project File
City of Shoreline
Entered into the record October 8, 1997 at the request of Richard McCann, Attorney, U.S. West Communications
- Exhibit K** Definition of the word "BLIGHT". (Source: Webster's II New Riverside University Dictionary, 1984, page 692)
Submitted at hearing by:
Anna Kolousek, Director, Development Services Group, City of Shoreline
- Exhibit L** 1994 King County Comprehensive Plan, Adopted by the City of Shoreline on June 26, 1995 per Ordinance No. 10 (Entire document entered into record)
Pages 27, 55, 57 and 214 (attached) were submitted at hearing by:
Anna Kolousek, Director, Development Services Group, City of Shoreline
- Exhibit M-1** Chart - Cell Sites within Cities (paper copy)
Submitted at hearing by:
Ralph Long, Regional Real Estate Manager, U.S. West Communications
- Exhibit M-2** Chart - Signal Level Analysis
Submitted at hearing by:
Ralph Long, Regional Real Estate Manager, U.S. West Communications
- Exhibit M-3** Chart - Site and Surrounding Building (Photographs)
Submitted at hearing by:
Ralph Long, Regional Real Estate Manager, U.S. West Communications
- Exhibit M-4** Chart - Site Plan
Submitted at hearing by:
Ralph Long, Regional Real Estate Manager, U.S. West Communications
- Exhibit M-5** Chart - Computer Simulations of Area
Submitted at hearing by:
Ralph Long, Regional Real Estate Manager, U.S. West Communications
- Exhibit N** Chart - City of Shoreline Zoning Map
Submitted at hearing by:
Adrienne Quinn, Attorney for U.S. West Communications

- Exhibit O** **Chart - Regional Business Zone**
 (paper copy)
 Submitted at hearing by:
 Adrienne Quinn, Attorney for U.S. West Communications
- Exhibit P** **Chart - King County Comprehensive Plan Telecommunications Policies**
 (paper copy)
 Submitted at hearing by:
 Adrienne Quinn, Attorney for U.S. West Communications
- Exhibit Q** **Chart - Telecommunications Act of 1996, 47-USC332**
 (paper copy)
 Submitted at hearing by:
 Adrienne Quinn, Attorney for U.S. West Communications
- Exhibit R** **Letter to Robert Deis (City Manager), Bruce Disend (City Attorney) and**
 Anna Kolousek (Director, DSG), City of Shoreline from
 Adrienne Quinn, Attorney, U.S. West
 Dated May 21, 1997
 Entered into the record October 8, 1997 at the request of Richard McCann,
 Attorney, U.S. West Communications
- Exhibit S** **Letter to Robert Deis (City Manager), Bruce Disend (City Attorney) and**
 Anna Kolousek (Director, DSG), City of Shoreline from
 Adrienne Quinn, Attorney, U.S. West
 Dated May 9, 1997
 Entered into the record October 8, 1997 at the request of Richard McCann,
 Attorney, U.S. West Communications
- Exhibit T** **Findings, Conclusions and Decision**
 Submitted to Hearing Examiner by Bruce Disend, City Attorney,
 City of Shoreline
 Received October 17, 1997
- Exhibit U** **Proposed Findings of Fact and Conclusions of Law**
 Submitted to Hearing Examiner by Adrienne Quinn, Attorney for
 U.S. West
 Received October 17, 1997